

## **Decision of the Dispute Resolution Chamber**

passed in Zurich, Switzerland, on 17 January 2014,

in the following composition:

**Geoff Thompson (England)**, Chairman

**Mario Gallavotti (Italy)**, member

**Damir Vrbanovic (Croatia)**, member

**Theo van Seggelen (Netherlands)**, member

**Takuya Yamazaki (Japan)**, member

on the claim presented by the player,

**Player V**, from country B

*as Claimant*

against the club,

**Club K**, from country T

*as Respondent*

regarding an employment-related dispute  
arisen between the parties

**I. Facts of the case**

1. On 15 July 2011, Player V, from country B (hereinafter: *the Claimant* or *the player*), and Club K, from country T (hereinafter: *the Respondent* or *the club*), signed an employment contract (hereinafter: *the contract*) valid as from the day of signing until 31 May 2014.
2. According to article 3 of the contract, the Claimant was entitled to the following remuneration:

For the season 2011-2012: a total amount of EUR 525,000 net, payable in one signing-fee of EUR 75,000 by 31 July 2011 and nine further monthly instalments in the amount of EUR 50,000 each, the first instalment to be paid on 31 August 2011.

For the season 2012-2013: a total amount of EUR 600,000 net payable in one installment of EUR 100,000 by 15 July 2012 and ten further monthly instalments in the amount of EUR 50,000 each, the first instalment to be paid on 31 August 2012.

For the season 2013-2014: a total amount of EUR 600,000 net payable in one installment of EUR 100,000 by 15 July 2013 and ten further monthly instalments in the amount of EUR 50,000 each, the first instalment to be paid on 31 August 2013.

3. Furthermore, the contract provided for a rental car, a furnished rental apartment and four round-trip flight tickets with the route country T – country B – country T for the whole term of the contract.
4. On 31 October 2012, the Claimant lodged a claim against the Respondent in front of FIFA requesting to be awarded with outstanding salaries and compensation for breach of contract in the total amount of EUR 1,781,500, according to the following breakdown:
  - EUR 295,000 as outstanding salaries for part of January 2012 and February, March and April 2012 (EUR 195,000) plus the installment due on 15 July 2012 (EUR 100,000);
  - EUR 1,100,000 as compensation for breach of contract in the amount of its remaining value (EUR 500,000 + EUR 600,000);
  - EUR 99,000 for the allowances of car, accommodation and flight tickets for the remaining term of the contract;
  - EUR 287,500 as moral damages.

- 5% interest rate *"over the total amount due as compensation [...] from the date of the breach of the contract (or from the original date of maturation, as the case may be) until the date of effective payment"*;
  - legal costs;
5. In this respect, the Claimant explained that since the beginning of the contract, he received his salaries with delay and, as from January 2012, he did not receive any salaries at all.
  6. In view of the above, and according to the Claimant after several contacts between both parties, on 8 August 2012 he sent a letter to the Respondent terminating the contract on the basis of article 14 of the FIFA Regulations on the Status and Transfer of Players *"due to the fact that I have not been paid since last January"*. According to the Claimant, such letter remained unanswered.
  7. Furthermore, on 23 October 2012, the Claimant contacted the Respondent once more in writing, requesting the payment of the outstanding amounts as well as compensation however, to no avail.
  8. In its reply, the Respondent stated that due to the match-fixing scandal in country T, the country T Football Federation did not pay the club on time. Furthermore, the Respondent declared that the Claimant had left the country for his holiday period and never returned. According to the Respondent, the Claimant was waiting for the country T Football Federation to confirm that the Respondent was being relegated to the second division for the following season. Only when the country T Football Federation confirmed the relegation, the Claimant started with the process for the termination of the contract. Hence, the Respondent deemed that the termination was not only related to the outstanding salaries.
  9. Moreover, the Respondent explained that the Claimant's salaries were too high for a second division club, and that is why it could not afford to pay him his full salaries. However, according to the Respondent, it paid some amounts and in this respect enclosed some payment receipts in the country T language.
  10. On account of the above, the Respondent requested the partial rejection of the claim and that *"it will be decided to equity incentive with the maximum percentage"*.
  11. Upon request of FIFA, the Claimant declared that he only entered into a new labour relationship on 2 January 2013, by signing a contract with Club R, from country B. According to such contract, which is valid as from 2 January 2013

until 30 May 2013 and further extended until 31 December 2013, he is entitled to a monthly salary in the amount of currency of country B 50,000.

## **II. Considerations of the Dispute Resolution Chamber**

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *DRC* or *Chamber*) analysed whether it was competent to deal with the case at hand. In this respect, the Chamber took note that the present matter was submitted to FIFA on 31 October 2012. Consequently, the 2008 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*) is applicable to the matter at hand (cf. art. 21 of the 2008 and 2012 editions of the Procedural Rules).
2. Subsequently, the members of the Chamber referred to art. 3 par. 1 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (edition 2012), the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a country B player and a country T club.
3. Furthermore, the Chamber analysed which edition of the Regulations on the Status and Transfer of Players should be applicable as to the substance of the matter. In this respect, the Chamber confirmed that in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (editions 2010 and 2012), and considering that the claim was lodged on 31 October 2012, the 2010 edition of the aforementioned regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.
4. The competence of the Chamber and the applicable regulations having been established, and entering into the substance of the matter, the Chamber started by acknowledging the above-mentioned facts as well as the documentation contained in the file. However, the Chamber emphasised that in the following considerations it will refer only to the facts, arguments and documentary evidence which it considered pertinent for the assessment of the matter at hand.
5. First of all, the members of the Chamber acknowledged that, on 15 July 2011, the Claimant and the Respondent had concluded an employment contract valid as from 15 July 2011 until 31 May 2014, according to which the Claimant was entitled to receive, during the 2011/2012 season, the total amount of EUR 525,000 net, payable in one instalment of EUR 75,000 on 31 July 2011 and nine further monthly instalments in the amount of EUR 50,000 each. Equally, the

Chamber noted that during the 2012/2013 and 2013/2014 season, the Claimant was entitled to the total amount of EUR 600,000 per season.

6. The Chamber further observed that the Claimant unilaterally terminated the contract on 8 August 2012 asserting that the monthly salaries of January, February, March and April 2012 had not been paid. Equally, the Claimant indicated that the payment of EUR 100,000 that fell due on 15 July 2012 had not been paid. As a result, the Claimant deemed that he terminated the contract with just cause and requested payment of the total amount of EUR 1,781,500 from the Respondent.
7. Furthermore, the Chamber noted that the Respondent, for its part, recognized that some payments had not been made, but that this was only due to the match-fixing scandal in country T. Equally, the Respondent argued that the Claimant's decision to terminate the contract was not only due to the outstanding remuneration, but also connected to the Respondent's relegation to the second division.
8. Having established the aforementioned, the Chamber observed that the fundamental issue in the present dispute, considering the claim of the Claimant and the allegations of the Respondent, is to determine whether the Claimant had just cause to terminate the contract on 8 August 2012.
9. In this respect, the Chamber noted that it had remained uncontested by the Respondent that the salaries of January, February, March and April 2012 as well as the payment due on 15 July 2012 had remained unpaid. The Chamber stressed that the alleged financial difficulties of the Respondent due to the match-fixing scandal in country T could not form a justification for the non-payment of the Claimant's salaries, as this constituted a purely internal affair between the Respondent and the country T Football Federation, which could not be held against the Claimant.
10. Furthermore, and for the sake of completeness, the Chamber pointed out that the Respondent had provided payment receipts in the country T language only. Apart from failing to specify to which contractual payment obligations such receipts corresponded, the Chamber outlined that the relevant receipts had been submitted without translation, although having been asked to do so. As a result, the Chamber concluded that it could not take into account the relevant payment receipts in accordance with art. 9 of the Procedural Rules.
11. Having taken into consideration the previous considerations, the Chamber decided that it could be established that the Respondent had seriously neglected its contractual obligations towards the Claimant in a continuous and constant manner, i.e. the Respondent had failed to remunerate the Claimant

for a substantial period of time. Therefore, the Chamber considered that the Respondent was found to be in breach of the employment contract and that the breach was of such seriousness that, in line with the Chamber's long-standing and well-established jurisprudence, the Claimant had a just cause to unilaterally terminate the contractual relationship with the Respondent on 8 August 2012.

12. Thus, the Chamber established that the Claimant had terminated the employment contract with just cause on 8 August 2012 and that, consequently, the Respondent is to be held liable for the early termination of the employment contract.
13. Bearing in mind the previous considerations, the Chamber went on to deal with the consequences of the early termination of the employment contract with just cause by the Claimant.
14. First of all, the members of the Chamber concurred that the Respondent must fulfill its obligations as per employment contract in accordance with the general legal principle of "*pacta sunt servanda*". Consequently, the Chamber decided that the Respondent is liable to pay to the Claimant the remuneration that was outstanding at the time of the termination *i.e.* the amount of EUR 295,000, consisting of the monthly salaries of January to April 2012 in the amount of EUR 195,000 and the amount of EUR 100,000 for the installment due in July 2012.
15. Furthermore and considering the Claimant's claim for interest, the Chamber determined that the Respondent must pay 5% interest on the amount of EUR 295,000 as from the respective due dates.
16. In continuation, the Chamber decided that, taking into consideration art. 17 par. 1 of the Regulations, the Claimant is entitled to receive from the Respondent compensation for breach of contract in addition to any outstanding remuneration on the basis of the relevant employment contract.
17. In this context, the Chamber outlined that, in accordance with said provision, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including, in particular, the remuneration and other benefits due to the Claimant under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.

18. In application of the relevant provision, the Chamber held that it first of all had to clarify whether the pertinent employment contract contained any clause, by means of which the parties had beforehand agreed upon a compensation payable by the contractual parties in the event of breach of contract. In this regard, the Chamber established that no such compensation clause was included in the employment contract at the basis of the matter at stake.
19. Having recalled the aforementioned, and in order to evaluate the compensation to be paid by the Respondent, the members of the Chamber took into account the remuneration due to the Claimant in accordance with the employment contract as well as the time remaining on the same contract, along with the professional situation of the Claimant after the early termination occurred. In this respect, the Chamber pointed out that at the time of the termination of the employment contract, the contract would run for another 22 months. Consequently, the Chamber concluded that the remaining value of the contract as from its early termination by the Claimant until the regular expiry of the contract amounts to EUR 1,100,000 and that such amount shall serve as the basis for the final determination of the amount of compensation for breach of contract.
20. In continuation, the Chamber recalled that the Claimant had found new employment with a club from country B, Club R, as from 2 January until 31 December 2013. In accordance with the employment contract signed between the Claimant and Club R, the Claimant was entitled to a monthly salary of currency of country B 50,000. As a result, the total remuneration the Claimant would receive from Club R for the period between 2 January 2013 and 31 December 2013 amounts to currency of country B 600,000 which corresponds to approximately EUR 190,800.
21. Consequently, in accordance with the constant practice of the Dispute Resolution Chamber and the general obligation of the Claimant to mitigate his damages, such remuneration under the new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract.
22. In view of all of the above, the Chamber decided that the Respondent must pay the amount of EUR 909,200 to the Claimant, which is considered by the Chamber to be a reasonable and justified amount as compensation for breach of contract.
23. In addition, taking into account the Claimant's request, the Chamber decided that the Respondent must pay to the Claimant interest of 5% *p.a.* on the

amount of compensation as of the date on which the claim was lodged, *i.e.* 31 October 2012, until the date of effective payment.

24. As a consequence, the DRC concluded that the Respondent is liable to pay the total amount of EUR 1,204,200 to the Claimant, consisting of the amount of EUR 295,000 corresponding to the Claimant's outstanding remuneration and the amount of EUR 909,200 corresponding to compensation for breach of contract.
25. In continuation, the Chamber decided to reject the Claimant's request for EUR 99,000 concerning the allowances of car, accommodation and flight tickets since the contract did not specify any amount in this respect. Equally, the Chamber determined to reject the request for further damages since said request had not been supported by any evidence that demonstrated the damage suffered.
26. Moreover, the Dispute Resolution Chamber decided to reject the Claimant's claim pertaining to legal costs in accordance with art. 18 par. 4 of the Procedural Rules and the Chamber's respective longstanding jurisprudence in this regard.
27. The Dispute Resolution Chamber concluded its deliberations in the present matter by establishing that any further claim lodged by the Claimant is rejected.

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### **III. Decision of the Dispute Resolution Chamber**

1. The claim of the Claimant, Player V, is partially accepted.
2. The Respondent, Club K, has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, outstanding remuneration in the amount of EUR 295,000 plus 5% interest *p.a.* until the date of effective payment as follows:
  - a. 5% *p.a.* as of 1 February 2012 on the amount of EUR 45,000;
  - b. 5% *p.a.* as of 1 March 2012 on the amount of EUR 50,000;
  - c. 5% *p.a.* as of 1 April 2012 on the amount of EUR 50,000;
  - d. 5% *p.a.* as of 1 May 2012 on the amount of EUR 50,000;
  - e. 5% *p.a.* as of 16 July 2012 on the amount of EUR 100,000.
3. The Respondent has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, compensation for breach of contract in the

amount of EUR 909,200 plus 5% interest *p.a.* on said amount as of 31 October 2012 until the date of effective payment.

4. If the aforementioned sums plus interest are not paid by the Respondent within the stated time limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.
5. Any further claim lodged by the Claimant is rejected.
6. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittances are to be made and to notify the Dispute Resolution Chamber of every payment received.

**Note relating to the motivated decision** (legal remedy):

According to art. 67 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision and shall contain all the elements in accordance with point 2 of the directives issued by the CAS, a copy of which we enclose hereto. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS (cf. point 4 of the directives).

The full address and contact numbers of the CAS are the following:

Court of Arbitration for Sport  
Avenue de Beaumont 2  
1012 Lausanne  
Switzerland  
Tel: +41 21 613 50 00 / Fax: +41 21 613 50 01  
e-mail: [info@tas-cas.org](mailto:info@tas-cas.org)  
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For the Dispute Resolution Chamber:

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Markus Kattner  
Deputy Secretary General

Encl. CAS directives